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OGC 78-2509

19 April 1978

OGC Has Reviewed

MEMORANDUM FOR: General Counsel

FROM:

[REDACTED]
Assistant General Counsel
Logistics & Procurement Law Division

SUBJECT: Renegotiation Board (U)

REFERENCES: (a) Memo dtd 10 Apr 78 to General Counsel
fm [REDACTED] AGC, same subject (OGC 78-2234)
(b) MFR dtd 27 Feb 78 fm [REDACTED] AGC,
same subject (OGC 78-1206)

1. (C) Pursuant to the conversation between the General Counsel for the Renegotiation Board and the undersigned, which is detailed in referent (a), a meeting was held 18 April 1978, at the Renegotiation Board (Board) with the Acting Chairman. In attendance were:

Mr. Harry R. VanCleve, Acting Chairman, Renegotiation Board
Mr. Val McWhorter, General Counsel, Renegotiation Board
[REDACTED] Chief, Contracts Staff, OD&E/DDS&T
[REDACTED] Chief, Security Staff, OD&E/DDS&T
[REDACTED] Assistant General Counsel, L&PLD

2. (U) The purpose of this session was an effort on our part to resolve the current Board's jurisdiction claim relative to contracts placed by the Agency. Reference (b) explains the immediate problem, and its details need not be repeated here. We have had several meetings previously with the Board and had earlier shown to Mr. McWhorter the letter to the Chairman presenting the Agency's position; namely, that our contracts were not subject to the Act. That letter was signed by Mr. Blake as A/DDCI; however, since it was codeword material, it could not be left at the Board due to lack of approved security storage facilities. As you are aware, our interpretation of the Act's jurisdiction and attendant effort to resolve the matter were disputed by the Chairman, who, through his counsel, opined that our contracts were subject to being renegotiated "since the money probably came from DOD."

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SUBJECT: Renegotiation Board (U)

3. (U) Reference (a) outlines a formal hearing which had been scheduled for 25 April 1978, at which time we were to present our case before the Board. I posed objection to that procedure and requested an opportunity to discuss the problem with the Acting Chairman, Mr. Harry VanCleve, since the Chairman was out of town again.

25X1A 4. (S) Mr. VanCleve was briefed as to the background of the instant case by Mr. McWhorter who also provided the Chairman's view. The Agency's representatives presented our position after Mr. VanCleve read the A/DDCI's letter. An extensive question and answer period followed. Mr. VanCleve was also briefed [] since the contracts concerned sensitive national programs. The entire explanation and discussions were candid so as to assure that the Acting Chairman was knowledgeable of the fact that the particular funds came from a national program as part of the Agency's mission.

5. (S) Mr. VanCleve discussed the matter with his counsel and concluded that the Renegotiation Act of 1951 was not intended to cover a problem such as the immediate one. He asked what role, [] play in 25X1C these matters. He was told that the procurement effort was performed totally by the Agency. In response to his question, he was informed that the actual number of times in which a Renegotiation Board auditor wants to examine a contract which we have placed was not many. Under the circumstances, he added, it would be best that any future situations be handled on an informal basis.

6. (C) Mr. VanCleve restated his view that the Renegotiation Act was not intended to cover this type of situation, that, in fact, these were CIA contracts and not subject to the jurisdiction of the Board. The Board, in calling off its auditor without revealing the CIA role, would inform him that the subject contracts were exempt for security reasons which is a permissible exemption under the Act. We agreed to maintain a copy of the A/DDCI letter in our files for future reference.

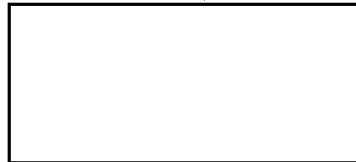
7. (C) In summary, the meeting successfully resolved a problem by acknowledging that CIA contracts are not subject to being renegotiated. The hearing has been ordered stricken

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SUBJECT: Renegotiation Board (U)

from the Board's docket. A procedure was agreed upon that will enable us in an informal manner to apprise the Board in the future which contracts are ours so that the Board will not proceed with renegotiation.



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Attachments:
References

cc: DDA, w/atts
D/L, w/o atts
C/CS/OD&E/DDS&T, w/o atts
C/SS/OD&E/DDS&T, w/o atts

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OGC 78-2234

10 April 1978

MEMORANDUM FOR: General Counsel

FROM:

Assistant General Counsel

SUBJECT: Renegotiation Board

1. I received a phone call 7 April 1978 from Mr. Val McWhorter, General Counsel, Renegotiation Board, indicating that a hearing before the Board was scheduled for 1000, 25 April 1978, to discuss our position that the Board has no jurisdiction over contracts placed by the CIA. Mr. McWhorter apologized for the recent delay in resolving the matter explaining that the Chairman, Goodwin Chase, was out of town again.

2. Mr. McWhorter said under the Sunshine Act, the Board was required to publish an agenda in the Federal Register one week before a hearing. He stated that the entry in the Federal Register would only indicate "classified." He said that the Board hearings are public and attended by those interested in some specific matter before the Board. As to classified matters, the public is cleared and the meeting is limited to the members and the immediate parties concerned.

3. The meeting itself is tape recorded and a record is made by the Secretary to the Board, Mr. Kelvin Dickinson, an Assistant General Counsel. Mr. Dickinson has no clearance with us, incidentally. Moreover, as I pointed out, the contract matter, which prompted the problem with the Board, is codeword material and cannot be recorded under security conditions not approved by our security officers. I reminded him that the reason why we have been unable to leave the Agency's letter (which was signed by the Acting Deputy Director for Administration) was due to the absence of security facilities to store codeword materials.

4. I asked again whether it was absolutely necessary to have a formal hearing. Further, I asked if other Government agencies were required to go through this rigmarole. He did not answer the latter but stated the Sunshine Act required a formal meeting whenever a quorum met to discuss an issue. I commented that appeared to be a very strict interpretation, perhaps overly so.

5. I pointed out to Mr. McWhorter that resolution of this problem seemed to be taking an inordinate period of time. Specifically, I reminded him that several times in the past we had meetings set up only to find that the Chairman had left town.

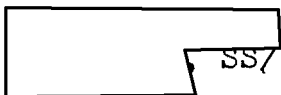
6. I suggested perhaps there was someone who could speak in the absence of Mr. Chase. Mr. McWhorter indicated Mr. Harry VanCleve was Acting Chairman and we may wish to discuss the problem with him. I indicated I would get back to him on Monday, 10 April 1978.

7. I recommended that we do contact Mr. VanCleve as soon as possible. Hopefully, he will dispose of the problem finally and without the formalty suggested by Mr. McWhorter.

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